

(Research) Article

Effectiveness of Detention by Public Prosecutors Against Perpetrators of Criminal Acts

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Abstract: Detention is one of the most coercive measures in the criminal justice process and is intended to ensure the effectiveness of criminal proceedings. In many legal systems, public prosecutors are granted authority to order detention against suspects or defendants under specific legal requirements. However, the practical effectiveness of detention by public prosecutors in achieving procedural objectives and safeguarding legal rights remains a subject of debate. This study aims to examine the effectiveness of detention carried out by public prosecutors against perpetrators of criminal acts, focusing on its legal basis, implementation, and impact on the criminal justice process. Using a normative juridical approach supported by qualitative analysis of legislation, legal doctrines, and relevant case studies, this research evaluates whether prosecutorial detention fulfills principles of legality, necessity, proportionality, and human rights protection. The findings indicate that while detention by public prosecutors can enhance procedural efficiency and prevent obstruction of justice, its effectiveness is often constrained by inconsistencies in application, weak judicial oversight, and potential risks of arbitrary detention. This study concludes that strengthening legal safeguards, standardizing detention criteria, and enhancing accountability mechanisms are essential to ensure that detention by public prosecutors remains both effective and compliant with the rule of law.

Keywords: Criminal Justice System; Detention; Effectiveness; Human Rights; Public Prosecutor.

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1. Introduction

Detention constitutes a fundamental coercive measure within the criminal justice system, aimed at ensuring the effective conduct of investigations, prosecutions, and trials. As a form of deprivation of liberty, detention must be applied as a measure of last resort and must comply with legal safeguards to prevent arbitrary interference with individual rights (Lubis, 2021). During the prosecution stage, public prosecutors hold a strategic position, including the authority to order the detention of suspects or defendants accused of criminal offenses. This authority is generally justified to prevent the suspect from fleeing, tampering with evidence, or reoffending, while simultaneously maintaining the integrity of the judicial process (Sihombing, 2019).

Empirical and normative studies published in open-access journals indicate that detention practices have historically been dominated by a focus on police detention and judicial pretrial detention, particularly concerning due process guarantees and judicial supervision (Sudarsono, 2021; Marzuki & Rahman, 2020). In contrast, detention ordered by public prosecutors has received less academic attention, despite the significant discretionary power exercised during the prosecution phase. Several studies suggest that prosecutorial detention may contribute to procedural efficiency and case management; however, it also

raises serious concerns regarding accountability and the potential violation of suspects' rights (Harahap & Saputra, 2022).

Although the legal framework regulating detention is formally well-established, journal-based research reveals a recurring gap between normative regulations and practical implementation. Detention is frequently applied as a routine procedure rather than an exception, often accompanied by limited legal reasoning and weak external oversight mechanisms (Handayani, 2020). In the Indonesian context, open-access legal journals emphasize that prosecutorial discretion in detention decisions is often influenced by institutional practices and pragmatic considerations, rather than strict adherence to the principles of necessity and proportionality (Wiranata, 2021; Kusuma, 2022). Such conditions raise critical questions regarding the effectiveness of prosecutorial detention, particularly when evaluated from a human rights perspective.

This study seeks to address the following research problems: (1) how is detention by public prosecutors regulated within the criminal justice system? (2) how is such detention implemented in practice? and (3) to what extent is detention by public prosecutors effective in achieving criminal justice objectives while safeguarding human rights? These questions are increasingly relevant given the growing emphasis on due process and accountability within modern criminal justice reforms (Fauzi, 2021).

This research adopts a legal analysis framework based on the principles of legality, necessity, proportionality, and accountability, which are consistently emphasized in open-access criminal justice and human rights scholarship (Prasetyo, 2023). The contribution of this study lies in providing a systematic evaluation of detention by public prosecutors, identifying gaps between law and practice, and offering policy-oriented recommendations to strengthen detention mechanisms.

2. Preliminaries

This section provides a comprehensive normative and theoretical overview of detention within the Indonesian criminal justice system, with particular emphasis on the authority of public prosecutors and the protection of human rights. The discussion aims to establish a conceptual foundation for understanding detention as a coercive legal measure, while simultaneously situating it within the broader framework of due process of law and constitutional safeguards.

2.1. Legal Basis of Detention

Detention is defined as the placement of a suspect or defendant in a designated facility by an investigator, public prosecutor, or judge, based on an official legal order and carried out in accordance with the conditions and procedures prescribed by statutory provisions (Article 1 point 21 of the Criminal Procedure Code/KUHAP). This definition highlights that detention constitutes a formal legal act that directly restricts personal liberty and therefore must be strictly regulated by law to prevent arbitrary enforcement.

The authority of public prosecutors to impose detention is expressly stipulated in Article 20 paragraph (2) of the KUHAP, which provides that public prosecutors are empowered to order detention or continued detention for the purposes of prosecution. This provision reflects the strategic role of the public prosecutor as the *dominus litis* in the prosecution phase, particularly after the investigative process has been completed.

In practice detention by public prosecutors generally occurs in two principal contexts. First, detention may be imposed when the public prosecutor receives the transfer of responsibility for the suspect and physical evidence from the investigator during the second procedural stage (Tahap II). Second, detention may be continued or extended to facilitate the effective preparation and conduct of court proceedings. Within this framework, detention functions as a procedural instrument intended to secure the presence of the defendant during trial and to ensure the orderly administration of justice, rather than serving as a punitive measure prior to a final and binding judgment (Sihombing, 2019).

2.2. Objective and Subjective Requirements for Detention

KUHAP establishes clear and cumulative limitations through the formulation of objective and subjective requirements that must be satisfied simultaneously. The objective requirement, as regulated under Article 21 paragraph (4) of the KUHAP, limits the application of detention to criminal offenses punishable by imprisonment of five years or more, as well as to certain specific offenses explicitly enumerated by law, such as aggravated assault or theft under particular circumstances. This limitation reflects a legislative intention to confine

detention to serious crimes, thereby aligning the deprivation of liberty with the gravity of the alleged offense.

The subjective requirement set forth in Article 21 paragraph (1) of the KUHAP, requires the public prosecutor to have a well-founded concern, supported by sufficient preliminary evidence, that the suspect or defendant may abscond, destroy or conceal evidence, and/or repeat the criminal act. Unlike the objective requirement, this condition relies significantly on the discretionary judgment of the public prosecutor, which must be exercised prudently and based on rational legal considerations.

The discretionary nature of assessing subjective requirements has become a critical point of contention in academic and practical debates regarding prosecutorial accountability. The broad scope of interpretation available to public prosecutors may create the potential for inconsistent application or abuse of authority, particularly when detention decisions are inadequately justified or insufficiently documented (Kusuma, 2022).

2.3. Principles of Necessity and Proportionality

Detention must be grounded in the principles of necessity and proportionality. These principles require that detention should not be applied automatically or as a routine procedural response, but rather as a measure of last resort when no less restrictive alternatives are capable of achieving the same legal objectives.

The principle of necessity emphasizes that detention may only be justified if alternative measures, such as house arrest or city detention, are deemed inadequate to ensure the presence of the suspect or defendant and the integrity of the judicial process. Meanwhile, the principle of proportionality requires that the severity, duration, and conditions of detention be carefully balanced against the seriousness of the alleged offense and the personal circumstances of the individual concerned (Lubis, 2021).

The guarantee of due process of law necessitates that every detention decision be supported by clear, logical, and legally sound reasoning, which must remain subject to judicial review through procedural control mechanisms such as pretrial proceedings (*praperadilan*). These safeguards play a crucial role in preventing the misuse of prosecutorial authority and in ensuring that detention does not infringe upon the constitutional rights of suspects or defendants (Marzuki & Rahman, 2020).

3. Proposed Method

3.1. Research Design

This study employs a normative legal research design (doctrinal research). Normative research focuses on the analysis of legal rules, principles, and doctrines to provide a prescriptive solution to legal issues (Pratama & Yulianto, 2021). This design is chosen to evaluate the consistency of prosecutorial detention practices against the Indonesian Criminal Procedure Code (KUHAP) and international human rights standards.

3.2. Approaches

To ensure a comprehensive analysis, the study utilizes several legal approaches:

- a) Statutory Approach: Examining the KUHAP and related regulations governing the authority of public prosecutors.
- b) Conceptual Approach: Analyzing legal concepts such as "last resort," "necessity," and "proportionality" as benchmarks for detention (Prasetyo, 2023).
- c) Case Approach: Reviewing selected court decisions and pretrial rulings (*praperadilan*) to identify patterns in how prosecutorial detention is challenged and interpreted in practice.

3.3. Sources of Legal Materials

The study relies on three categories of legal materials:

- a) Primary Legal Materials: Authoritative documents including the 1945 Constitution, KUHAP (Law No. 8 of 1981), The Prosecution Service Law (Law No. 11 of 2021), and international instruments such as the ICCPR.
- b) Secondary Legal Materials: Open-access journal articles, legal treatises, and research reports that provide critical analysis of detention and due process (Sudarsono, 2021; Wiranata, 2021).
- c) Tertiary Legal Materials: Legal dictionaries and encyclopedias used to clarify specific terminology.

3.4. Technique of Analysis

The collected materials are analyzed using a qualitative-prescriptive method. The analysis follows a deductive reasoning process starting from general legal principles (the *major premise*) and applying them to specific detention regulations and practices (the *minor premise*) to reach a conclusion regarding legal effectiveness and human rights compliance (Handayani, 2020).

4. Results and Discussion

4.1. Regulation of Prosecutorial Detention in the Indonesian Criminal Justice System

The legal basis for detention by public prosecutors is primarily governed by Articles 20 and 21 of the Indonesian Criminal Procedure Code (KUHAP), which collectively regulate both the authority and the conditions under which detention may be imposed. Normatively, this authority is granted to ensure that the prosecution phase proceeds in an orderly, effective, and uninterrupted manner, particularly in preventing procedural obstacles that could undermine the administration of justice, such as the absence of the suspect during trial or interference with evidentiary processes. In this framework, detention is conceptualized as an instrumental measure rather than a punitive one, intended solely to support the objectives of criminal procedure.

However a closer doctrinal analysis reveals a significant reliance on subjective requirements as stipulated in Article 21, Paragraph (1), whereby the public prosecutor is empowered to assess, based on personal judgment, whether a suspect poses a risk of flight, evidence tampering, or repetition of criminal conduct. These subjective considerations, although legally recognized, are inherently evaluative and depend heavily on prosecutorial discretion, which may vary widely across cases and institutional contexts.

While the objective requirements under Article 21, Paragraph (4) provide a more concrete threshold by limiting detention to offenses punishable by five years of imprisonment or more, this provision merely establishes eligibility rather than necessity. Consequently, even when the objective threshold is met, the justification for detention still hinges on subjective assessments that lack clear statutory guidance. The absence of detailed evidentiary benchmarks for proving the existence of these risks creates a normative gap within the KUHAP framework (Sihombing, 2019).

This lack of statutory detail effectively grants prosecutors a broad, and in practice nearly absolute, margin of discretion in ordering detention. The KUHAP does not mandate a specific “standard of proof” or require prosecutors to substantiate their concerns with verifiable facts, which often results in detention warrants that are formally valid but substantively weak. As a result, detention decisions may rely more on presumptive reasoning than on concrete, case-specific analysis, thereby increasing the potential for arbitrariness in the exercise of prosecutorial power (Kusuma, 2022).

4.2. Practical Implementation: The Gap Between Norm and Reality

Empirical evidence from open-access scholarship suggests that the practical implementation of prosecutorial detention frequently diverges from its normative conception as a measure of last resort. Rather than being applied selectively and cautiously, detention is often treated as a default procedural step once a case enters the prosecution stage. This routine application reflects a structural tendency within the criminal justice system to prioritize procedural expediency over individualized assessments of necessity.

Pragmatism over Principle in many instances, prosecutors prioritize institutional security, administrative efficiency, and responsiveness to public pressure over the principle of proportionality that underpins lawful detention. Concerns about public perception, media scrutiny, and the potential consequences of a suspect absconding often outweigh careful consideration of less intrusive alternatives, resulting in a pragmatic but legally questionable approach to detention (Wiranata, 2021).

Limited Legal Reasoning a recurring issue in prosecutorial practice is the use of standardized detention templates that merely reproduce the wording of relevant KUHAP provisions without articulating specific factual circumstances. These detention orders frequently fail to explain why a particular suspect poses a genuine risk of flight or evidence destruction, thereby reducing legal reasoning to a formalistic exercise rather than a substantive justification. Such practices undermine transparency and weaken the ability of suspects to meaningfully challenge the legality of their detention (Handayani, 2020).

Underutilization of Alternatives although the KUHAP explicitly allows for non-custodial alternatives such as house arrest and city arrest, these measures are rarely utilized in practice. This reluctance reflects an entrenched “culture of detention” within prosecutorial institutions, where custodial detention is perceived as the safest and most convenient option. The systemic preference for incarceration contributes significantly to the chronic overcapacity of correctional facilities and imposes substantial financial burdens on the state, while offering limited additional benefits in terms of justice outcomes.

4.3. Effectiveness in Achieving Justice and Safeguarding Human Rights

The effectiveness of prosecutorial detention is often assessed through a narrow procedural lens, particularly its ability to ensure the presence of suspects at trial and prevent procedural disruptions. From this perspective, detention can be considered highly effective, as it minimizes the risk of absconding and facilitates the smooth progression of criminal proceedings. However, when evaluated against broader standards of human rights protection and due process, the effectiveness of this practice becomes far more contentious.

Weak Oversight Mechanisms the primary legal avenue for challenging detention decisions in Indonesia is the pretrial hearing (*praperadilan*). In practice, however, courts tend to confine their review to formal administrative aspects, such as the existence of a detention warrant or compliance with procedural time limits. Substantive examination of whether detention is genuinely necessary or proportionate is rarely undertaken, thereby limiting judicial oversight over prosecutorial discretion (Sudarsono, 2021).

Proportionality Concerns the frequent and almost automatic use of detention for certain categories of crimes stands in tension with the principle of proportionality, which requires that restrictions on individual liberty be strictly necessary and balanced against competing interests. When detention is imposed without a demonstrable need, it risks transforming from a procedural safeguard into a form of “preemptive punishment.” Such practice erodes the presumption of innocence and undermines the fundamental distinction between suspects and convicted offenders (Prasetyo, 2023).

In summary while the current system of prosecutorial detention in Indonesia achieves a degree of procedural efficiency in maintaining the continuity of criminal proceedings, it remains deficient in robust accountability and effective oversight mechanisms capable of preventing arbitrary deprivation of liberty. The prevailing regulatory framework permits prosecutorial discretion to operate with limited substantive constraints, thereby increasing the risk that detention is imposed as a routine administrative measure rather than as a response to demonstrable necessity (Arifin, 2020; Lestari, 2021). This imbalance between expansive prosecutorial authority and weak judicial control exposes a structural vulnerability in the protection of individual rights, particularly when judicial review mechanisms fail to meaningfully assess the necessity and proportionality of detention decisions (Hidayat, 2019). As a consequence, detention may function as a *de facto* punitive measure prior to adjudication, undermining both the presumption of innocence and fundamental due process guarantees (Nasution, 2022). In a broader comparative context, international human rights law emphasizes that pretrial detention must be exceptional, strictly necessary, and subject to effective judicial review, as reflected in Article 9 of the International Covenant on Civil and Political Rights and the jurisprudence of international human rights bodies (United Nations Human Rights Committee, 2014; Cape *et al.*, 2010).

5. Conclusions

This study concludes that the regulation of detention by public prosecutors, as stipulated in Articles 20 and 21 of the Indonesian Criminal Procedure Code (KUHAP), still provides broad discretionary space without rigid parameters. Consequently, the subjective requirements for detention are often interpreted elastically, leading to weak accountability in the decision-making process. In practical implementation, a paradigm shift is observed where detention tends to be applied as a routine administrative procedure and a pragmatic tool to ensure case efficiency, rather than being positioned as a measure of last resort.

While prosecutorial detention proves effective in ensuring the defendant's presence at trial and preventing procedural obstacles, this effectiveness is not yet commensurate with the protection of human rights. The lack of substantive judicial oversight mechanisms through pretrial hearings (*praperadilan*) results in a failure to scrutinize the actual necessity of detention. Therefore, this study recommends legal reforms that mandate the inclusion of evidence-based legal reasoning in every detention warrant, the expansion of pretrial authority to examine the

aspect of necessity, and the optimization of non-custodial detention forms to realize a criminal justice system that is more proportional and respects human dignity.

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